

SETTLEMENT AGREEMENT

1. **Parties.** The "Parties" to this Settlement Agreement are as follows:

- A. Federal Deposit Insurance Corporation ("FDIC"), as Receiver for Security Pacific Bank (the "Bank");
- B. BancInsure, Inc. ("BancInsure"); and
- C. Mark Jaques, William Sinn, Fred Jensen, John Gerardi and David Tobias, each of whom are former officers and/or directors of the Bank (collectively, "D&Os"). The term "D&Os" does not include V. [REDACTED]

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2. **Purpose.** The purpose of this Settlement Agreement is to establish a procedure to resolve the Coverage Dispute (as defined below) that has been raised by BancInsure in an expeditious and mutually agreeable manner, and also to settle the FDIC's Claims (as defined below) against the D&Os without the need to litigate the underlying claims on the merits.

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3. **Definitions.**

- A. "BancInsure Policy" means the Directors' and Officers' Liability Policy, No. [REDACTED] as issued by BancInsure to the Bank as a Named Insured and under which the D&Os qualify as "Insureds" (as defined in the policy).
- B. "Policy Limits" means the \$6,000,000 in limits provided for under the BancInsure Policy.
- C. "FDIC's Claims" means the claims asserted by the FDIC against the D&Os as more fully set forth in the draft Complaint provided by counsel for the FDIC to counsel for the D&Os and counsel for BancInsure most recently on January 19, 2012.
- D. "Tolling Agreement" means the agreement to extend the running of any and all statutes of limitation, statutes of repose, or other defenses based on the passage of time, initially entered into between the FDIC and the D&Os as of October 26, 2011, and which agreement is presently in effect as a result of multiple extensions.
- E. "Coverage Dispute" means the legal dispute among the Parties based on or relating to BancInsure's declination of coverage for all Loss (as defined in the BancInsure Policy) arising out of the FDIC's Claims as first communicated by letter of November 30, 2010 issued by BancInsure's counsel, and all claims, liabilities or defenses which may in the future be asserted in the Coverage Action (as defined below) among the Parties relating to BancInsure's declination of coverage.
- F. "Coverage Action" means the lawsuit identified in Section 4(A) below.
- G. "Effective Date" means August 8, 2012.

H. "Final Judgment" means the final judgment in the Coverage Action, including the exhaustion of rights of appeal.

4. Terms.

A. Coverage Action.

- (1) Within 14 calendar days after this Settlement Agreement is fully executed by the Parties, the FDIC shall file an action in the United States District Court for the Central District of California, naming BancInsure as a defendant, which action is to resolve the Coverage Dispute. In the event the court or the Parties determine that BancInsure is the proper plaintiff to file such action against the FDIC to resolve the Coverage Dispute, BancInsure shall, within 14 days of such determination, file the Coverage Action in the United States District Court for the Central District of California, naming the FDIC as a defendant.
- (2) No Party shall challenge or object to any other Party's participation in the Coverage Action based on subject matter jurisdiction, standing or on any other basis. The defendant(s) named in the Coverage Action hereby agree to accept service of the complaint through their counsel and in accordance with the notice provision below, without the need for the filing party to incur the cost of personal service. Subject to Section 4(F) below, to advance the purposes of this Settlement Agreement, the D&Os hereby assign all of their rights, title and interest with respect to the BancInsure Policy and any claims for coverage thereunder or related thereto to the FDIC. The FDIC hereby assumes all rights, title and interest with respect to the BancInsure Policy and any claims for coverage thereunder or related thereto. The Parties hereby waive the requirement established in Section X (H) of the BancInsure Policy that any consent to assignment be physically endorsed to the BancInsure Policy. The Parties stipulate that the assignment set forth herein satisfies the requirement that BancInsure consent in writing to this assignment as required by Section X (H) of the BancInsure Policy. This assignment shall not reduce the amount of loss otherwise included in the definition of "Loss" in Section IV (H) of the BancInsure Policy. No Party shall challenge or object to this assignment in any manner or for any reason whatsoever. In the event, and for whatever reason, the United States District Court for the Central District of California refuses to hear the Coverage Action, whether based on issues of jurisdiction or otherwise, the FDIC shall file the Coverage Action in the Los Angeles County Superior Court for the State of California. If, as noted in Section 4(A)(1), above, it is determined that BancInsure is the proper party to file such action, then it shall do so within 14 days of such determination.

- (3) The Parties agree that the D&Os and the FDIC have fully satisfied Section X (D)(1) of the BancInsure Policy and that this Settlement Agreement constitutes a written agreement among the Parties pursuant to which BancInsure's obligation to pay "Loss" as defined under the BancInsure Policy shall be finally determined in accordance with this Settlement Agreement and the BancInsure Policy. The requirement of an adjudication against the D&Os establishing an obligation to pay before an action is taken against BancInsure is hereby waived by the Parties. As a result, there is no need for the FDIC and the D&Os to litigate the FDIC's Claims. BancInsure hereby expressly acknowledges that Section X (D)(1) of the BancInsure Policy shall not be asserted as a defense to coverage and also expressly acknowledges that, if the FDIC prevails in the Coverage Action or if the FDIC and BancInsure settle the Coverage Action, the FDIC shall not be required to file an action against the D&Os or to otherwise establish any liability against the D&Os in order to obtain the Policy Limits, or any portion thereof.
 - (4) In light of the assignment set forth in Section 4(A)(2), above, it is the understanding of the Parties that the D&Os do not need to be joined or named as parties to the Coverage Action to resolve the Coverage Dispute. If, however, at any time it appears that the D&Os must be joined or named as nominal parties in the Coverage Action because they are found to be necessary or indispensable parties, or otherwise, the D&Os hereby consent to be joined or named as nominal parties for that purpose and shall accept service of the complaint or other papers joining/naming them in the manner set forth in Section 4(A)(2), above. To the extent that the D&Os are joined/named in the Coverage Action, BancInsure acknowledges that Section X (D) of the BancInsure Policy has no bearing upon and shall not bar such joinder/naming.
- B. Prior to the execution of this Settlement Agreement, the FDIC reviewed the D&Os' personal financial statements and tax returns and, in reliance upon the information provided therein, the FDIC has determined that litigation against the D&Os for the purpose of executing against their personal assets would not be cost-effective. Accordingly, the FDIC hereby waives any claim against the D&Os in excess of the Policy Limits and further agrees to look only to the BancInsure Policy and the Policy Limits with respect to the FDIC's Claims.
- C. In the event the FDIC prevails in the Coverage Action through Final Judgment or the FDIC and BancInsure settle the Coverage Action, BancInsure shall pay the amount awarded in the Final Judgment within 30 days of Final Judgment or, if applicable, shall pay the settlement amount within 30 days of the execution of the settlement agreement. Interest shall accrue on the amount of any Final Judgment or settlement not paid within said 30-day period at the rate of 10% per annum. The standard rules and procedures governing the prosecution and recovery of costs under federal and California law shall apply. If BancInsure fails to timely make payment as set forth above, then the FDIC

shall be entitled to file a direct action for breach of contract and/or any other appropriate claim against BancInsure to enforce the Final Judgment or settlement of the Coverage Action, and the FDIC shall not be required to file an action against the D&Os or to otherwise establish any liability against them in order to obtain the Policy Limits. In the event that the FDIC files such an action to enforce the Final Judgment or settlement of the Coverage Action, the prevailing party shall be entitled to costs and reasonable attorney's fees.

D. In the event the FDIC prevails in the Coverage Action through Final Judgment or the FDIC and BancInsure settle the Coverage Action, \$65,000 of the amount paid by BancInsure shall be transmitted to [REDACTED] (or as directed by [REDACTED]) within thirty (30) days of the payment of the judgment or settlement funds.

E. The FDIC, BancInsure and the D&Os acknowledge and agree that the D&Os shall not under any circumstances be required to contribute to any settlement, judgment, or other form of payment, including payment for indemnification, to the FDIC, BancInsure or to any related party, arising from or in any way related to the FDIC's Claims.

F. The Parties are aware of a lawsuit entitled RES-CA [REDACTED], filed in the Superior Court of California, Riverside County (Indio Branch), Case No. [REDACTED], in which two of the D&Os, Mark Jaques and Fred Jensen, have been named as cross-defendants by Defendant and Cross-Complainant [REDACTED] (the "[REDACTED] Claim"). Mark Jaques and Fred Jensen contend that they may be entitled to coverage under the BancInsure Policy with respect to the [REDACTED] Claim, and BancInsure contends that there is no coverage afforded under the BancInsure Policy for the [REDACTED] Claim. The Parties hereby agree that the [REDACTED] Claim is excluded from the scope of this Settlement Agreement with respect to the FDIC's Claims. By this carve-out, Mark Jaques and Fred Jensen reserve all of their rights to pursue coverage under the BancInsure Policy for the [REDACTED] Claim up to a maximum total recovery of \$100,000, and BancInsure reserves all of its rights as to its position that no coverage, either for defense costs or indemnity, is available to Mark Jaques and Fred Jensen for the [REDACTED] Claim. Additionally, Mark Jaques and Fred Jensen are not assigning to the FDIC any of their rights, title and interest with respect to the BancInsure Policy for the [REDACTED] Claim.

Mark Jaques and/or Fred Jensen may decide to litigate or further pursue their claim for defense and/or indemnification of the [REDACTED] Claim against BancInsure. In the event that occurs, and if BancInsure pays, pursuant to a court determination, settlement or otherwise, any amount to or on behalf of Mark Jaques and/or Fred Jensen for actually incurred defense costs and/or actual indemnification of the [REDACTED] Claim, the Policy Limits shall be decreased by the amount of such payment, provided, however, that (1) in no event shall the Policy Limits be reduced by more than \$100,000 (regardless of how much Mark Jaques and/or Fred Jensen actually may incur with respect to the [REDACTED] Claim) and (2) any such payment on the [REDACTED] Claim to or on behalf of Mark Jaques and/or Fred Jensen must be made by BancInsure prior to the time the FDIC resolves the Coverage Action against BancInsure (either by Final Judgment or settlement). If BancInsure satisfies an award or agrees to make any payment whatsoever on the [REDACTED]

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claim, said payment must be made prior to a Final Judgment in favor of the FDIC or settlement of the Coverage Action and its total payment obligation on the [REDACTED] Claim shall not exceed \$100,000. If said payment is not made before said alternative payment obligations to the FDIC arise, BancInsure shall have no further liability on the [REDACTED] Claim.

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If no such payment on the [REDACTED] Claim to or on behalf of Mark Jaques and/or Fred Jensen is made by BancInsure prior to the time the FDIC resolves the Coverage Action against BancInsure (either by Final Judgment or settlement), then the full Policy Limits shall remain available to the FDIC as set forth in this Settlement Agreement, regardless of any coverage determination concerning the [REDACTED] Claim, any subsequent judgment or settlement of the [REDACTED] Claim and/or any subsequent payment made by BancInsure to or on behalf of Mark Jaques and/or Fred Jensen with respect to the [REDACTED] Claim. In that event, BancInsure shall have satisfied its obligations to all parties to this Settlement Agreement by paying the full \$6,000,000 policy limit to the FDIC and there shall be no further claims to coverage based on the [REDACTED] Claim.

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G. The D&Os and the FDIC shall continue to extend the Tolling Agreement until such time as the Coverage Action is resolved by Final Judgment or settlement, whichever is later or, if the D&Os and the FDIC mutually agree that the purposes of the Tolling Agreement have been satisfied, the Tolling Agreement may be discontinued at that time. Coincident with the execution of this Settlement Agreement, the D&Os and the FDIC shall extend the Tolling Agreement for a period of one year, subject to further extension(s) if required to comply with this paragraph.

5. Additional Provisions.

A. **Notice.** All notices required to be given under this Settlement Agreement shall be in writing and delivered to the addresses set forth below.

If to FDIC: Sandra I. Weishart
Larry M. Golub
Barger & Wolen LLP
633 West Fifth Street, 47th Floor
Los Angeles, CA 90071-2043

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If to the D&Os: Peter Rosen
Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560

(b)(6)

If to BancInsure: Edward F. Donohue
Hinshaw & Culbertson LLP

(b)(6)

One California St. 18th Floor,
San Francisco, California, 94111

David T. DiBiase
Carleton R. Burch
Anderson, McPharlin & Connors LLP
444 South Flower Street, 31st Floor
Los Angeles, CA 90071

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- B. **Power and Authority to Execute Settlement Agreement.** Each Party represents, warrants, and agrees that he or it has the power and authority to enter into and perform this Settlement Agreement. Each Party further represents, warrants, and agrees that he or it has not assigned or transferred any claim, demand, action, cause of action, or right encompassed within this Settlement Agreement, other than the assignment made by the D&Os in Section 4(A)(2), above. Any person signing this Settlement Agreement on behalf of an entity represents, warrants and agrees that he or she has the power and authority to execute this Settlement Agreement on behalf of such entity.
- C. **Joint Drafting.** The Parties each acknowledge that this Settlement Agreement was drafted jointly by them and, therefore, if any court of competent jurisdiction finds a portion or portions of this Settlement Agreement ambiguous, this Settlement Agreement shall not be construed for one party and against another.
- D. **Integration Clause.** The provisions of this Settlement Agreement comprise all of the terms, conditions, agreements, and representations of the Parties with respect to the subject matter hereof. This Settlement Agreement supersedes all prior agreements, arrangements, and understandings, if any, relating to the subject matter hereof (including, without limitation, the Term Sheet for Agreement, as entered into by the Parties as of January 20, 2012) and may be amended only by an instrument in writing executed jointly by the Parties. All representations and promises made by any party to another, whether in writing or orally, concerning the subject matter of this Settlement Agreement are understood by the Parties to be merged into this Settlement Agreement.
- E. **Severability.** If any portion or portions of this Settlement Agreement is or are held by a court of competent jurisdiction to conflict with any federal, state, or local law, and as a result such portion or portions are declared to be invalid and of no force and effect in such jurisdiction, all remaining provisions of this Settlement Agreement shall otherwise remain in full force and effect and shall be construed as if such valid portion or portions has not been included herein.

- F. **Execution; Facsimile Signatures; Counterparts.** This Settlement Agreement may be executed by means of facsimile or scanned and e-mailed, and each copy of this Settlement Agreement bearing the facsimile transmitted or scanned and e-mailed signature of each Party or, in the case of an entity, its authorized representative, shall be deemed an original. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- G. **Governing Law.** This Settlement Agreement shall be governed by federal law and, to the extent that state law would apply under applicable federal law, the laws of the State of California govern. The Parties consent to venue and personal jurisdiction in the United States District Court for the Central District of California should any dispute arise relating to this Settlement Agreement and, to the extent that an action must be filed in the Los Angeles County Superior Court for the State of California, the Parties consent to venue and personal jurisdiction in that location.
- II. **Careful Review and Understanding of Agreement.** The Parties represents that they have carefully read this Settlement Agreement and understand its terms and conditions without reservation. The Parties acknowledge that they have had ample opportunity to consult with legal counsel of their choice regarding this Settlement Agreement and have not relied on any representations or statement of any other Party or counsel for any other Party with respect to the subject matter of this Settlement Agreement.
- I. **Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, legal representatives, attorneys, shareholders, officers, directors, employees, agents, divisions, parent companies, subsidiaries or affiliated corporations, successors and assigns.
- J. **Responsibility for Attorney's Fees and Costs.** Other than as set forth in this Settlement Agreement, the Parties shall be responsible for the payment of their own attorney's fees and costs, if any.
- K. **Attorney's Fees Regarding Release.** If litigation, arbitration or any other proceeding is instituted to interpret or enforce this Settlement Agreement, the party prevailing in that litigation, arbitration or proceeding shall be entitled to reasonable attorney's fees and costs, in addition to any other such relief granted.
- L. **Reasonable Cooperation.** The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Settlement Agreement, including doing or causing their agents and attorneys to do whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry of any documents necessary to perform the terms of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement, by and through their counsel, as of the Effective Date stated above.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR SECURITY F

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Date: Nov. 1, 2012

Its: Assistant Director

BANCINSURE, INC.

Date: _____, 2012

By: _____

Its: _____

Date: _____, 2012

By: _____

MARK JAQUES

Date: _____, 2012

By: _____

WILLIAM SINN

Date: _____, 2012

By: _____

FRED JENSEN

Date: _____, 2012

By: _____

JOHN GERARDI

Date: _____, 2012

By: _____

DAVID TOBIAS

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement, by and through their counsel, as of the Effective Date stated above.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR SECURITY PACIFIC BANK


Date: _____, 2012

By: _____

Its: _____

BANCINSURE, INC.

Date: 11-6, 2012

By: 

Its: as President

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(b)(6)

Date: _____, 2012

By: _____

MARK JAQUES

Date: _____, 2012

By: _____

WILLIAM SINN

Date: _____, 2012

By: _____

FRED JENSEN

Date: _____, 2012

By: _____

JOHN GERARDI

Date: _____, 2012

By: _____

DAVID TOBIAS

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement, by and through their counsel, as of the Effective Date stated above.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR SECURITY PACIFIC BANK

Date: _____, 2012

By: _____

Its: _____

BANCINSURE, INC.

Date: _____, 2012

By: _____

Its: _____

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Date: October 30, 2012

By: _____

MARK JAC

(b)(6)

Date: _____, 2012

By: _____

WILLIAM SINN

Date: _____, 2012

By: _____

FRED JENSEN

Date: _____, 2012

By: _____

JOHN GERARDI

Date: _____, 2012

By: _____

DAVID TOBIAS

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement, by and through their counsel, as of the Effective Date stated above.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR SECURITY PACIFIC BANK

Date: _____, 2012

By: _____

Its: _____

BANCINSURE, INC.

Date: _____, 2012

By: _____

Its: _____

Date: _____, 2012

By: _____

MARK JAOUES

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(b)(6)

Date: Oct 26, 2012

By: _____

WILLIAM

(b)(6)

Date: _____, 2012

By: _____

FRED JENSEN

Date: _____, 2012

By: _____

JOHN GERARDI

Date: _____, 2012

By: _____

DAVID TOBIAS

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement, by and through their counsel, as of the Effective Date stated above.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR SECURITY PACIFIC BANK

Date: _____, 2012

By: _____

Its: _____

BANCINSURE, INC.

Date: _____, 2012

By: _____

Its: _____

Date: _____, 2012

By: _____

MARK JAQUES

Date: _____, 2012

By: _____

WILLIAM SINN

(b)(6)

(b)(6)

Date: 10-30, 2012

By: _____

FRED J

Date: _____, 2012

By: _____

JOHN GERARDI

Date: _____, 2012

By: _____

DAVID TOBIAS

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement, by and through their counsel, as of the Effective Date stated above.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR SECURITY PACIFIC BANK

Date: _____, 2012

By: _____

Its: _____

BANCINSURE, INC.

Date: _____, 2012

By: _____

Its: _____

Date: _____, 2012

By: _____

MARK JAQUES

Date: _____, 2012

By: _____

WILLIAM SINN

Date: _____, 2012

By: _____

FRED JENSEN

Date: 10-29, 2012

By: _____

JOHN GEORGE DI

Date: _____, 2012

By: _____

DAVID TOBIAS

(b)(6)

(b)(6)

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement, by and through their counsel, as of the Effective Date stated above.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR SECURITY PACIFIC BANK

Date: _____, 2012

By: _____

Its: _____

BANCINSURE, INC.

Date: _____, 2012

By: _____

Its: _____

Date: _____, 2012

By: _____

MARK JAQUES

Date: _____, 2012

By: _____

WILLIAM SINN

Date: _____, 2012

By: _____


FRED JENSEN

Date: _____, 2012

By: _____

JOHN GERARDI

Date: 10/30/12, 2012

By: 

DAVID TOBIAS

(b)(6)

APPROVED AS TO FORM:

(b)(6)

Date: 11/1, 2012

BARGER & WOLEN LLP



By: Sandra L. Weishart
Larry M. Golub
Attorneys for Federal Deposit Insurance
Corporation, as Receiver for Security
Pacific Bank

HINSHAW & CULBERTSON LLP

Date: _____, 2012

By: _____
Edward F. Donohue
Attorneys for BancInsure, Inc.

**ANDERSON, MCPHARLIN & CONNORS
LLP**

Date: _____, 2012

By: _____
David T. DiBiase
Carleton R. Burch
Attorneys for BancInsure, Inc.

LATHAM & WATKINS LLP

Date: _____, 2012

By: _____
Peter K. Rosen
Attorneys for Mark Jaques, William
Sinn, Fred Jensen, John Gerardi, and
David Tobias

APPROVED AS TO FORM:

BARGER & WOLEN LLP

Date: _____, 2012

By: _____

Sandra I. Weishart
Larry M. Golub
Attorneys for Federal Deposit Insurance
Corporation, as Receiver for Security
Pacific Bank

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HIN



(b)(6)

By:

Edward
Attorney

(b)(6)

Date: November 14, 2012

**ANDERSON, MCPHARLIN & CONNORS
LLP**

Date: November 14, 2012

By:



David T. DiBiase
Carleton R. Burch
Attorneys for BancInsure, Inc.

(b)(6)

LATHAM & WATKINS LLP

Date: _____, 2012

By: _____

Peter K. Rosen
Attorneys for Mark Jaques, William
Sinn, Fred Jensen, John Gerardi, and
David Tobias

APPROVED AS TO FORM:

BARGER & WOLEN LLP

Date: _____, 2012

By: _____
Sandra I. Weishart
Larry M. Golub
Attorneys for Federal Deposit Insurance
Corporation, as Receiver for Security
Pacific Bank

HINSHAW & CULBERTSON LLP

Date: _____, 2012

By: _____
Edward F. Donohue
Attorneys for BancInsure, Inc.

**ANDERSON, MCPHARLIN & CONNORS
LLP**

Date: _____, 2012

By: _____
David T. DiBiase
Carleton R. Burch
Attorneys for BancInsure, Inc.

(b)(6)

LATHAM & WATKINS LLP

Date: November 13, 2012

By: _____
Peter K. Rosen
Attorneys for Mark Jaques, William
Sinn, Fred Jensen, John Gerardi, and
David Tobias